IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 611 OF 2007

Chandulai Hirachand Shah & ors.... Petitioner

versus

Syndicate Bank & ors..... Respondent.

Mr. R.M.Jaykar with Ms.Dimple Mehta i/b. M/s. Jayakars for the petitioner.
Ms. Manisha Patil i/b. M/s. Bhave & Co. for Respondent no.1.
Mr. Sagar Talekar with Mr. Rui Rodriques for Respondent no.3.

CORAM; A.P. DESHPANDE, J.
DATED; 04TH AUGUST, 2007

P.C.;

1. The present petitioners claim to be executors of the will of one late J.R. Mistry who was a tenant of the respondent no.2 in relation to tenanted premises situated on 4th floor, 26 Syndicate Bank building, Sir P.M. Road, Fort, Mumbai. The respondent no.2 has initiated proceeding against the petiitoners seeking their eviction and possession of the premises before the Estate Officer under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act 1971. The said proceedings came to be initiated after the termination of the tenancy and by contending that occupation of the tenant/petitioner after the termination of tenancy is unauthorised.

2. The Estate Officer has passed an order on 7-12-2006, which is impugned in the present petition, calling upon the present petitioners (respondent before the Estate Officer) to lead evidence first.

3. The petitioners by placing reliance on a judgment delivered in W.P. 361/06 by a Division Bench of this Court (Dr. S.Radhakrishnan and J.P.Devadhar, JJ.) submits that one of the issue that fell for consideration before the Division Bench arose in some what similar set of facts and the same is as to who should lead evidence first and the issue is considered in paragraph 26. The Division Bench proceeds to consider the case on a premise that the petiitoner in the said petition is a genuine lawful tenant and holds that in case when a genuine lawful tenant is to be evicted, the respondent needs to initially establish and prove the ground of eviction. Perusal of the said judgment reveals that the ratio laid down in para 23 cannot be made applicable to cases of unlawful occupants, illegal subletees or an employee over -staying in the premises after services come to an end. The court has held that in cases of this kind, the onus will be on such an occupant, to show that he is not in an unauthorised occupation.

4. The Division Bench in the above referred judgment had an occasion to consider the judgment delivered by the Division Bench of this court in W.P. No. 2512/02. The consideration of the said judgment is in paragraph 17. The Division Bench has distinguished the said judgment and held that the said judgment does not support the respondent. My attention is drawn to the judgment delivered in W.P.2512/02 and the ratio laid down therein. In the said petition, the order passed by the Estate Officer was challenged which directed the petitioners/occupants to lead evidence first in point of time. In para 6 of the judgment the Division Bench held that it cannot be said that by passing the impugned order any ilelgality has been committed by the Estate Officer as it is not in dispute that the notice had been issued by respondent no. 1 and tenancy of petitioner was terminated. Primafacie therefore the court held that the petitioners can be said to be in unauthorised occupation after termination of tenancy. It is thus obvious that having regard to the judgment in W.P.No. 2512/02 (Coram C.K.Thakar C.J., as he then was, and Smt. R.P.Desai, J.) wherein it is held that after termination of the tenancy, the occupation of the tenant could be primafacie termed as unauthorised, the order passed by the Estate Officer cannot be faulted.

5. While examinging the order passed by the Estate Officer in exercise of jurisdiction under Article 227 of the Constituion of India, it must be shown that the impugned order suffers from a patent or manifest illegality. The view taken by the Estate Officer appears to be in conformity with the Division Bench decision of this court rendered in W.P.No. 2512/02 referred to hereinabove. Thus it is obvious that the view taken by the Estate Officer is a possible view. I do not propose to interfer with the impugned order at this stage. The legality or otherwise of the said order could be appropriately considered in an appeal if and in case, the petitioner is required to file one. Hence leaving all questions raised in this writ petition open to be agitated in an appeal, I decline to interfer with the impugned order. The writ petition thus stands summarily rejected.

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